

REMARKS

The Final Office Action mailed February 21, 2008 has been received and carefully noted. Claims 1-25 are currently pending in the subject application and are presently under consideration.

Claims 1, 5, 8, 11, 14, 20, and 25 have been amended herein. A listing of claims can be found on pages 2-6 of this Reply.

Favorable reconsideration of the pending claims is respectfully requested in view of the amendments and the following comments.

I. Rejection of Claims 20, 24, and 25 Under 35 U.S.C. § 102(e)

Claims 20, 24, and 25 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Kelly *et al.* (U.S. 2003/0050015). It is respectfully requested that these rejections be withdrawn for at least the following reason. Kelly *et al.* does not describe each and every element of the claims.

For a prior art reference to anticipate, 35 U.S.C. §102 requires that “*each and every element* as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (*quoting Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)) (emphasis added). In particular, amended independent claim 20 recites: “transmitting a *PES packet* to a consumption device” (emphasis added). Kelly *et al.* fails to describe this aspect.

Kelly *et al.* discloses a User Datagram Protocol (UDP) packet that includes a multicast IP header, a UDP header, and a Traffic Token Ring (TTR) buffer (*See Kelly et al.*, Figure 5b, paragraph 0094). However, Kelly *et al.* is silent regarding a packetized elementary stream (PES). Thus, the Kelly *et al.* does not disclose “transmitting a *PES packet* to a consumption device” (emphasis added).

Regarding dependent claim 24, the Examiner fails to establish a *prima facie* case against novelty because the Examiner does not particularly note which sections of Kelly *et al.* disclose the “PES header” and the “PES payload.” To establish a *prima facie* case against novelty, “[w]hen a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified” (See M.P.E.P. § 706; 37 C.F.R. § 1.104(c)(2)). In the rejection of claim 24, the Examiner does not specifically refer to the language of the claim, and thus has not established a *prima facie* case against novelty that the headers and payloads indicated in Figure 5b of Kelly *et al.* are specifically characterized as PES.

Amended independent claim 25 recites:

transmitting a data structure to a consumption device,
the data structure **consisting of**:
a header,
key information separate from and associated
with the header for use in decryption, and
a payload associated with the header and
separate from the key information, the payload
capable of being encrypted the using key information.

The phrase “consisting of” limits the data structure to only the listed elements (*i.e.*, header, key information, and payload) (See M.P.E.P. § 2111.03).

The Examiner cites Figure 5b and descriptive paragraphs 0069 and 0094 of Kelly *et al.* for the above limitations (See Final Office Action mailed February 21, 2008, pgs. 2 and 3). In particular, the Examiner cites the multicast IP header (item 525 of Fig. 5b) and UDP header (item 527 of Fig. 5b) for the recited “header” of the claim, the DES key (item 537 of Fig. 5b) for the recited “key information” of the claim, and the payload (item 545 of Fig. 5b) for the recited “payload” of the claim. However, the UDP/IP packet (item 523 of Fig. 5b) does not **consist** only of the elements recited in the claim. For example, the UDP/IP packet includes two headers (which is an extra header beyond “a header”) and many packets (which are not recited in the claim). Therefore

the cited reference does not teach the limitations of claim 25 that would exclude other elements not specified in the claim.

In view of the foregoing, it is readily apparent that Kelly *et al.* does not describe each and every limitation of the claims as amended. Reconsideration and withdrawal of these rejections are respectfully requested.

II. Rejection of Claims 1-19 Under 35 U.S.C. § 103(a)

Claims 1-19 stand rejected under 35 U.S.C. § 103(a) as being obvious over Blatter *et al.* (U.S. 5,878,135), in view of Kelly *et al.* It is respectfully requested that these rejections be withdrawn for at least the following reason. The Examiner does not establish *prima facie* obviousness of claims 1-19.

To establish *prima facie* obviousness, Blatter *et al.* and Kelly *et al.*, alone or in combination, must teach or suggest all the claim limitations. The independent claims, as amended, recite a synchronization point and a payload within the same **PES packet**. However, as mentioned above, Kelly *et al.* is silent regarding PES, much less a PES packet. The Examiner does not indicate and the Applicants cannot discern any part of Blatter *et al.* that cures the aforementioned deficiencies of Kelly *et al.* Thus, Blatter *et al.* and Kelly *et al.*, alone or in combination, fail to teach or suggest all the claim limitations of the amended independent claims.

The Applicants do not believe that the combination of Blatter *et al.* and Kelly *et al.* is proper. While "[o]bviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so" (See MPEP § 2143.01(I); *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (discussing rationale underlying the motivation-suggestion-teaching test as a guard against using hindsight in an obviousness analysis)), there are limitations on which proposed modifications may be allowed.

Amended independent claims 1, 5, 8, 11, and 14 recite:

parsing a data stream to find a predefined synchronization point within a PES packet of the data stream; and
placing *non-compliant data* separate from the *synchronization point* and a *payload* in the *PES packet*;
wherein the PES packet is decodable by a compliant decoder, after the non-compliant data is replaced with compliant data.

(emphasis added) or analogous aspects. The Examiner concedes that Blatter *et al.* does not disclose all these aspects, but contends that Blatter *et al.* may be modified with the structure of Kelly *et al.* to teach all the limitations of these claims (See Final Office Action mailed February 21, 2008, pgs. 3 and 4). However, this proposed modification would change the principle of operation, which is improper according to M.P.E.P. § 2143.01(VI).

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.

In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). See M.P.E.P. § 2143.01(VI). The Examiner contends that the references are combinable because “it would have been obviousto achieve the predictable result of separating a header and a payload from key-information/non-compliant data” (See Final Office Action mailed February 21, 2008, pg. 4). The Applicants respectfully disagree.

By combining Blatter *et al.* and Kelly *et al.*, the Examiner uses selective aspects of the packet structure of Kelly *et al.* with selective aspects of the packet structure and decoding of Blatter *et al.* Specifically, the Examiner indicates that the parsing and decoding aspects of the claims are taught by Blatter *et al.*, while the placement of the non-compliant data separate from the synchronization point and payload is taught by Kelly *et al.* The Examiner maintains that this combination would be proper because both references “are directed to transmission of encrypted packetts [sic]. Placing non-compliant data separate [sic] from the synchronization point as taught by Kelly [sic]

could be employed within the system of Blatter *et al.* as indicated in the last office action" (See Advisory Action mailed May 9, 2008). However, this combination is not proper. A combination of the teachings of these two references would not be performed by one of ordinary skill in the art because the teachings are incompatible.

One of ordinary skill in the art would not combine the structure of Kelly *et al.* with the parsing and decoding aspects of Blatter *et al.* because an attempt to parse and decode a modified data stream in the format of Kelly *et al.* would fail. For example, Blatter *et al.*'s decoder would not know how to decode a data packet of Kelly *et al.*, as Blatter *et al.*'s decoder would not recognize the format of these data packets. Blatter *et al.*'s decoder is configured to detect particular data packet fields and changing this configuration would alter the principle of operation, which is improper according to M.P.E.P. § 2143.01(VI).

In another example, the claims recite parsing to find a synchronization point within a data stream. As specified in the claims, this synchronization point introduced in the beginning of the claim is the same synchronization point later recited in the claim that is separate from the non-compliant data and the payload. However, the Examiner cites a synchronization point of Blatter *et al.* for the first instance of the term "synchronization point" in the claim and a synchronization point of Kelly *et al.* for the second instance of the term "synchronization point" in the claim. The Examiner relies on two different references to teach the "synchronization point" because Kelly *et al.*'s synchronization point is an encapsulating header of the UDP packet (See Fig. 5b), but Kelly *et al.* does not describe headers for each of the N packets in the UDP packets (See Fig. 5b). The Applicants respectfully request that the Examiner clarify which synchronization point (Blatter *et al.* or Kelly *et al.*) is being used to reject the claims.

Each of the dependent claims depends from one of the independent claims, thus incorporating the respective limitations thereof. For at least the above reasons relating to the independent claims, the Examiner has not shown that Blatter *et al.* and Kelly *et al.* are properly combinable. Accordingly, it is respectfully requested that these rejections be withdrawn.

III. Rejection of Claims 21-23 Under 35 U.S.C. § 103(a)

Claims 21-23 are rejected under 35 U.S.C. § 103(a) as being obvious over Kelly *et al.*, in view of Blatter *et al.* Claims 21-23 depend from independent claim 20, thus incorporating the respective limitations thereof. The Examiner does not contend and the Applicants do not discern any part of Blatter *et al.* that cures the aforementioned deficiencies of Kelly *et al.* with respect to the amended independent claims. For at least the above reasons regarding the amended independent claims, Kelly *et al.* and Blatter *et al.* do not teach or suggest all the limitations of claims 21-23. Reconsideration and withdrawal of these rejections are respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

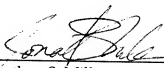
If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Date: _____

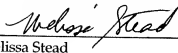
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Melissa Stead

5-29-08
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